

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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UNPUBLISHED

April 8, 2014

In the Matter of J METHNER, Minor.

No. 317787

Arenac Circuit Court

Family Division

LC No. 12-011910-NA

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Before: STEPHENS, P.J., and SAAD and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals as of right the August 2, 2013 order of the trial court terminating his parental rights to JM (DOB 2/2/13) according to the grounds specified in MCL 712A.19(b)(3)(c)(i) and (ii), (3)(g), and (3)(j). The trial court found clear and convincing evidence that statutory grounds were satisfied and it was in JM's best interests to terminate the parental rights of respondent. We affirm.

**I. PERTINENT FACTS AND PROCEDURAL HISTORY**

This case originally involved the parental rights to four children, of which JM is the youngest. The mother of all four children voluntarily terminated her parental rights. The trial court terminated the parental rights of the father of one of the other children, while the father of the other two children voluntarily released his parental rights.

Petitioner originally petitioned the trial court to remove three children from the home of the mother and respondent (at the time thought to be the father of MM, one of JM's half-siblings). The petition alleged (relevant to respondent) that respondent was incarcerated for domestic assault, that the mother was going to be incarcerated for larceny, that respondent tested positive for marijuana on November 23, 2011 and April 11, 2012, and that an appropriate plan to care for the children had not been made.

The petition also alleged that police responded to two domestic disturbance calls at the mother's apartment on April 10, 2012. Respondent locked the mother out of the apartment and she kicked the door down. The mother alleged that respondent hit her in the face. MM was present in the home. Respondent was also involved in a domestic altercation with his father in November 2011 while children and the mother were present; respondent's father required treatment at a hospital after the incident.

The trial court ordered the children removed to foster care with supervised parenting time, and ordered services provided to respondent. A dispositional hearing was held on June 1, 2012. Respondent had been charged with burglary and receiving stolen property during the pendency of this case. Respondent took Vicodin without a prescription and extensively used marijuana. Respondent had completed a psychological evaluation, begun counseling, and was attempting to enter inpatient substance abuse treatment.

JM was born in early February 2013. The trial court took jurisdiction over JM and added respondent as the putative father of JM. DNA testing eventually determined that respondent was not the biological father of MM but was the biological father of JM.

At an April 18, 2013 permanency planning hearing, it was reported that respondent was incarcerated until at least November 21, 2013 due to leaving the scene of an accident causing great bodily harm. The guardian ad litem for the children stated that the children were doing well in their foster care placement, and explained that he was concerned about missed parenting time. The foster care provider reported that all the children were bonding well together.

By the time of the termination hearing on August 2, 2013, the mother had voluntarily released her rights to all her children, and respondent had vacated his acknowledgement of parentage with regard to MM. Thus, only respondent's parental rights to JM were at issue.

Respondent was not present at the hearing, due to his incarceration. Respondent's mental health therapist, Randy Mey, testified that he had worked with respondent for six months on parenting skills, anger management, and maintaining sobriety. Respondent completed 9 of 12 units of a federally-designed program regarding substance abuse and anger issues, and completed a workbook on those issues between sessions. Respondent completed two parenting-skill workbooks that provided information that respondent could utilize. Respondent missed 6 of 31 sessions. Respondent's counseling ended as he was planning to enter residential care and confront his legal issues.

Mey testified that he did not believe respondent's treatment for substance abuse was successful; in late November or December of 2012, respondent told Mey that he was extensively using alcohol, marijuana, and opiates on the weekends. Respondent reported to Mey that he was not truthful about his substance use and was trying to use substances in a way that petitioner would not detect. Mey believed that respondent's substance abuse would have a significant effect on his parenting and had further concerns about respondent's ability to parent. Mey testified that he would not continue working with respondent due to his lack of truthfulness and failure to benefit from the services.

The psychologist who completed a psychological evaluation of respondent, Dr. Blair Devlin, found that respondent had low average intelligence which could limit insight into issues. Devlin described respondent's test results as revealing impulsiveness, and reactive anger with difficulty in interpersonal relationships. Devlin testified that respondent had potential for explosive behavior. Devlin believed that respondent's characteristics possibly could negatively affect his judgment in disciplining children. Devlin's prognosis for respondent to overcome his barriers was guarded. Devlin stated that his concerns were not necessarily respondent's ability to parent, but his possible relapse into substance abuse.

A foster care worker, Josett Gracey, testified that she was concerned about respondent's unstable housing, substance abuse, and unemployment. Respondent did not successfully complete his treatment plan, had missed 11 parenting time visits with MM, and failed 4 of 13 drug tests. Respondent was involved in an altercation with a woman after the children were removed that resulted in destruction of property charges and a personal protection order against respondent. Respondent also admitted to Gracey that he was intoxicated at the time of the auto accident that led to his incarceration. Gracey did not believe respondent benefitted from the services he was provided. She noted that respondent had not met JM. Respondent continued to struggle with illegal activity, unstable housing, lack of employment, and substance abuse.

Respondent was expected to be released from jail in November 2013, and his plans for housing were not known. Respondent was previously convicted of criminal sexual conduct in the third degree (CSC III), MCL 750.520d(1)(a) (victim age 13 through 15). On March 18, 2013, respondent pleaded guilty to failing to comply with the sex offender act. While incarcerated, respondent was convicted of being a disorderly person and was removed from a trustee position because he was belligerent with a staff member.

Respondent told Gracey that he had domestic violence charges pending against him from an incident with a different girlfriend, who was reportedly pregnant with respondent's child. Gracey spoke with Ogemaw County DHS regarding the incident and the Ogemaw report was attached to Gracey's report. It was reported that respondent pushed a dresser onto a playpen containing his girlfriend's one-year old child, with another child watching.

The trial court found clear and convincing evidence that grounds to terminate respondent's parental rights to JM were established, according to MCL 712A.19b(3)(c)(i) and (ii), (3)(g), and (3)(j). The trial court found that it was in JM's best interests to terminate respondent's parental rights. This appeal followed. Respondent challenges only the trial court's findings that statutory grounds for termination were established by clear and convincing evidence.

## II. STANDARD OF REVIEW

This Court reviews a trial court's findings of facts, and decision to terminate parental rights, for clear error. *In re CR*, 250 Mich App 185, 194; 646 NW2d 506 (2002). Clear error exists where, although there may be evidence to support a finding, the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008).

## III. STATUTORY GROUNDS FOR TERMINATION

Respondent argues that the court erred in finding that the cited statutory grounds had been established. We agree that MCL 712A.19b(3)(c)(i) was not shown, but reject his challenge based on §§ 19b(3)(g) and (j).

### A. MCL 712A.19b(3)(c)(i)

The trial court erred in citing MCL 712A.19b(3)(c) as grounds to terminate respondent's parental rights because 182 days had not elapsed from the initial disposition order until the

termination. MCL 712A.19b(3)(c)(i) provides in relevant part that termination may occur if “[t]he parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order,” and the court finds by clear and convincing evidence that the conditions that led to adjudication continue to exist and are not reasonably likely to be rectified.

Here, the trial court assumed jurisdiction over JM by dispositional order on February 13, 2013, and terminated respondent’s parental rights to JM on August 12, 2013, 180 days later. It is true that respondent became a “respondent in a proceeding” on June 1, 2012. However, the initial dispositional order with regard to JM was not issued until February 13, 2012. The dispositional phase of child protection proceedings determines what action should be taken on behalf of the child. *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993). We therefore conclude that the trial court erred in determining that this ground for termination was proven by clear and convincing evidence.

#### B. MCL 712A.19b(3)(g)

We next consider respondent’s claim that MCL 712A.19b(3)(g) was proven by clear and convincing evidence. Respondent argues that petitioner did not provide services sufficient for the trial court to determine that respondent could not care for JM. We disagree.

Generally, petitioner is required to make “reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights.” *Id.* Petitioner is required to adopt a service plan to assist respondent to rectify the conditions that caused the child’s removal. MCL 712A.18f(1), (2), and (4); *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). Petitioner’s failure to provide reasonable services may impact the sufficiency of the evidence in support of a statutory ground for termination. *In re Fried*, 266 Mich App at 541.

At a May 4, 2012 preliminary hearing, the trial court ordered services provided to respondent to rectify conditions that resulted in the removal of MM. At the time, respondent was thought to be MM’s biological father. The conditions that concerned petitioner at the time were respondent’s unstable housing, substance abuse, and unemployment. Respondent had a history of criminal activity and had tested positive for marijuana. The children were removed after respondent was in a physical altercation with the children’s mother. Respondent signed case service plans provided by petitioner on June 6, 2012, August 29, 2012, and December 5, 2012, agreeing to participate in mental health services including parenting and substance abuse issues. Respondent completed a psychological evaluation and began counseling.

During the course of treatment, respondent missed 11 parenting visits without adequate excuse. Respondent missed numerous sessions with his counselor, who was working with respondent on parenting skills, anger management, and maintaining sobriety. Respondent failed 4 of 13 drug tests and told his counselor that he was able to use alcohol, marijuana, and opiates on weekends without detection. The counselor declined to continue counseling with respondent while he was incarcerated because respondent was not truthful during counseling.

On November 19, 2012, respondent was in an auto accident while driving drunk. Respondent was subsequently convicted for leaving the scene of an accident and causing bodily

harm. He subsequently told a foster care worker that he was abusing alcohol and drugs on a daily basis and needed further intervention. Respondent did not have a place to live following incarceration. The foster care worker did not believe that respondent benefitted from the services he was provided.

Child protective proceedings are a single, continuous proceeding, where evidence from an earlier hearing may be considered at all subsequent hearings. *In re LaFlure*, 48 Mich App 377, 391; 210 NW2d 482 (1973). Petitioner was clearly providing services to respondent through case service plans in order to assist respondent in ameliorating the issues that resulted in removal of MM; these services continued until respondent's incarceration. Moreover, along with petitioner's responsibility to extend "reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondent[s] to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Respondent must demonstrate sufficient compliance with and progress from services provided to impact the problem addressed by those services. *Id.* at 248. Respondent here cannot make such a showing. It was respondent's failure to respond to the case service plan and parent MM that resulted in the petition to terminate his parental rights to JM. Respondent continued to struggle with illegal activity, unstable housing, lack of employment, and substance abuse after participating in the case service plans.

In sum, the trial court did not err in holding that respondent "fail[ed] to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." MCL 712A.19b(3)(g). This statutory ground was proven by clear and convincing evidence.

#### C. MCL 712A.19b(3)(j)

The record also supports the court's findings with regard to MCL 712A.19b(3)(j). Section 19b(3)(j) provides as follows:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

\* \* \*

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Respondent argues that there was no evidence that he ever harmed a child. However, a psychological evaluation determined that respondent possessed characteristics including impulsiveness, reactive anger, and potential for explosive behavior that could have a negative effect on his judgment in disciplining children. Respondent was involved in several violent incidents after the removal of his child, despite purportedly addressing anger management in his counseling. Respondent had a destruction of property charge against him. Respondent was convicted for being a disorderly person and was removed from a trustee position while incarcerated because he was belligerent with a staff member. Petitioner submitted evidence that respondent had domestic violence charges pending against him from an incident with a girlfriend

where respondent pushed a dresser onto a playpen containing his girlfriend's one-year-old child, with another child watching.

Furthermore, respondent made no progress in managing his substance abuse problem, resulting in another incarceration. There was no evidence presented that respondent successfully progressed in the other areas of concern, namely unstable housing and employment, that were addressed in respondent's case services plan. The failure to benefit from the services petitioner offered can be evidence "that return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well being." *In re Trejo Minors*, 462 Mich at 346 n 3.

Here, the evidence was substantial that returning JM to respondent's care presented a reasonable likelihood that the child would be harmed. Respondent's capacity, as described by the psychologist, and persistent episodes of aggressive and violent conduct, even in the presence of children, coupled with his inability to successfully address issues of substance abuse, housing, and employment, demonstrated a level of instability and chaos that presents a danger of emotional and physical harm to a child in his care. MCL 712A.19b(3)(j).

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Henry William Saad

/s/ Mark T. Boonstra